## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Farn *et al.*

Serial No.: 10/069,799

Filed: July 19, 2002

For: **VACCINE ANTIGENS OF MORAXELLA**

Group Art Unit: 1645

Examiner: Baskar, Padmavathi

Confirmation No. 3899



CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage for Express Mail in an envelope addressed to:
**Mail Stop**, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450

November 14, 2003 (Date) — N. Kemper — EL 946 758 499 US (Express Mail Tracking No.)

## RESPONSE TO RESTRICTION REQUIRMENT

Commissioner for Patents
Alexandria, VA 22313-1450

Sir:

In response to the Office Action of October 1, 2003 requiring restriction of the above invention to one of the following:

Group I: Claims 39-43 and 49 (SEQ ID NO:1); 51-55 and 61 (SEQ ID NO: 3); 63-66 and 72 (SEQ ID NO: 5); 74-82 (SEQ ID NO:1, 3 or 5) drawn to polypeptides and a composition comprising said polypeptides;

Group II: Claims 44-48 and 50 (SEQ ID NO: 2); 57-60 and 62 (SEQ ID NO: 4); 67-71 and 73 (SEQ ID NO: 6) drawn to nucleic acid and composition comprising said nucleic acid; and,

Group III: Claims 83 and 84 drawn to an antibody and a composition.

Applicants provisionally elect Group I with the sequence as set forth in SEQ ID NO: 5 (claims 63-66 and 72), with traverse.

The Office Action states that the claims, 39-84, are directed to the inventions that are not linked to form a single general inventive concept under PCT Rule 13.1.

However, Applicants argue that all the claims of the present application should be examined together because the claims of Groups I, II and III are indeed technically linked, i.e., the polypeptides of the Group I claims are encoded by the nucleic acid molecules of the Group II claims and the antibodies of claim 83 (Group III) are directed to the polypeptides of the Group I claims. Because of this shared technical feature, it would not cause extra burden to the Patent Office to search and examine the invention simultaneously.

Applications further point out that this request of simultaneous examination of all the claims herein is consistent with the restriction practice as governed by PCT practice as provided in the Administrative Instructions under the PCT, Part 2, "Examples concerning Unity of Invention". In particular, example 17 of these guidelines relates to a claim 1 drawn to a "protein X" and a claim 2 drawn to a "DNA sequence encoding protein X". It is stated therein that "Expression of the DNA sequence in a host results in the production of a protein which is determined by the DNA sequence. The protein and the DNA sequence exhibit corresponding special technical features. Unity between claims 1 and 2 is accepted."

The foregoing example is directly relevant to the present case. A common technical feature shared by the claims is the polypeptide sequence of SEQ ID NO: 5. Claims 63-66 are directed to polypeptides which have an amino acid sequence as set out in SEQ ID NO: 5. Claim 67 is directed to a polynucleotide that encodes a polypeptide having the sequence of SEQ ID NO: 5. Thus, claims 63-66 and 67 clearly share unity of invention. Similarly, the remainder of the claims of Group I directed to polypeptides share unity of invention with the claims of Group II directed to the